IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

WP(C).No. 18131 of 2007(H)

PETITIONER:

VIPINDAS P.S., S/O. P.V.SIVADASAN,
RESIDING AT "PRANAVAM", HIDAYATH NAGAR P.O.,
KASARAGOD-671 123.

BY ADV. SRI.D.KRISHNA PRASAD
SRI.D.NARENDRANATH
SRI.M.HARISHARMA
SRI.T.P.ELDHOSE
SMT.O.K.SANTHA

RESPONDENTS:

1. THE COMMISSIONER FOR ENTRANCE
EXAMINATIONS, THIRUVANANTHAPURAM-695 001.

2. STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SHRI.P.SANTHOSH KUMAR.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S.SIRI JAGAN, J.

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W.P.(C).No.18131 of 2007

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Dated this the 17th day of July, 2007

J U D G M E N T

The petitioner is an applicant for admission to the M.B.B.S. Course for 2007, for which purpose the petitioner has appeared for the common entrance test. The petitioner claims the benefit of reservation as a Scheduled Caste member by virtue of the fact that his mother is a member of a Scheduled Caste. Petitioner's father is Ezhava and the mother is Hindhu-Pulaya. According to the petitioner, as per Clause 5.4.2(f) of Ext.P1 prospectus, children of intercaste married couple are also entitled to the benefits of reservation as SC/ST, if one of the spouses is member of a Scheduled Caste. Petitioner submits that since the petitioner's mother is a member of a Scheduled Caste and the petitioner has been brought up in the society as Scheduled Caste, the petitioner is entitled to the benefit of reservation as Scheduled Caste. He seeks the following reliefs:

"a) issue a writ of mandamus or other appropriate writ, direction or order, directing the respondents to include the petitioner under the category of Scheduled Caste in the matter of admission to the Medical Degree Course, 2007:

b) or in the alternative, issue a writ of mandamus or other appropriate writ, order or direction, directing the 1st respondent to consider and pass orders on Exts.P2 and P3 after affording the petitioner an opportunity of being heard:"

2. With the help of a counter affidavit filed by the 1st respondent, the learned Special Government Pleader stoutly opposes the prayers. According to him, the Supreme Court in *Punit Ray v. Dinesh Chawdhary* reported in 2003 (8) SCC 204 has held that the caste status of a person follows that of his father and not that of his mother. He would further submit that as per the Full Bench decision of this court in *Indira v. State of Kerala* reported in 2005(4) KLT 119, it is not the caste status of either the mother or the father that decides the caste status of a child, but it has to be decided on the basis of upbringing of the child as Scheduled Caste. The learned counsel for the petitioner disputes this contention. According to him, the Supreme Court in the above said case does not state that the caste status follows that of the father. He would submit that since the petitioner has been

brought up in the society as a Scheduled Caste, going by the Full Bench decision he is certainly entitled to reservation as a Scheduled Caste. According to the counsel for the petitioner, the decision of the Supreme Court is in a totally different context and the same cannot be applied in the case for reservation for admission to professional courses.

3. I have considered the rival contentions in detail.

4. I am not going into the question as to whether the Supreme Court decision applies to the present case or not. It is not disputed before me that the Full Bench decision referred to above holds the field as of now. Going by that decision, the caste status of a child of intercaste married couple has to be deiced on the basis of upbringing of the child. Of course, the petitioner would state in the writ petition that the petitioner was in fact brought up as a Scheduled Caste in the society. But there is no conclusive evidence regarding that before me. I cannot decide that question merely on the basis of the averments in the writ petition alone. As such, the petitioner has to now prove that fact by some reliable evidence like certificates from the appropriate persons in the community, deposition of witnesses etc. In the

above circumstances, I dispose of this writ petition with the following directions:

The petitioner shall file an application before the Tahsildar seeking community certificate as a Scheduled Caste. The Tahsildar concerned shall conduct a detailed enquiry in which the petitioner shall be given sufficient opportunity to adduce evidence in support of his case and the Tahsildar shall take a decision. If the decision is in favour of the petitioner, community certificate shall be issued immediately. If necessary, the Tahsildar shall seek the assistance of the KIRTADS for the enquiry. At any rate, the entire proceedings shall be completed within a period of one month from the date of receipt of a copy of this judgment.

Writ petition is disposed of as above.

Sd/-

sdk+ S.SIRI JAGAN, JUDGE

///True copy///

P.A. to Judge.